

HOW EXPERT EVIDENCE WORKS & DOESN'T WORK

The Hon Mrs Justice Cockerill DBE

**THE
ACADEMY
OF
EXPERTS**

WEDNESDAY

12TH OCTOBER 2022



**HOW EXPERT EVIDENCE
WORKS – AND DOESN'T
WORK:
A JUDGE'S PERSPECTIVE ...**

Mrs Justice Cockerill DBE

Presentation Title

Helping the Judge: two sides of the coin





**Your
expertise and
the issues**

“[Mr X] strayed into areas in his evidence ...when it was beyond his expertise (or, most charitably, at the outer edge of his expertise) – a matter glaringly revealed [in evidence] he was no more than (in Bingham LJ's words) an "enthusiastic amateur“”
Gross LJ



If it takes a team ...

... ARE YOU THE EXPERT?

REMEMBER: IT IS YOU IN THE BOX ...

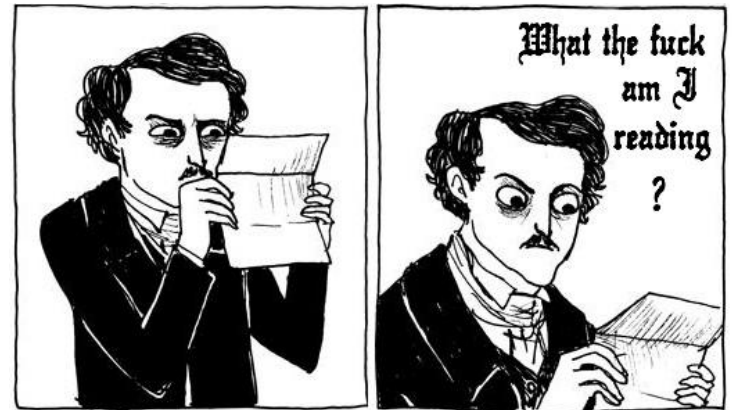
Independence



Do you have what you need?



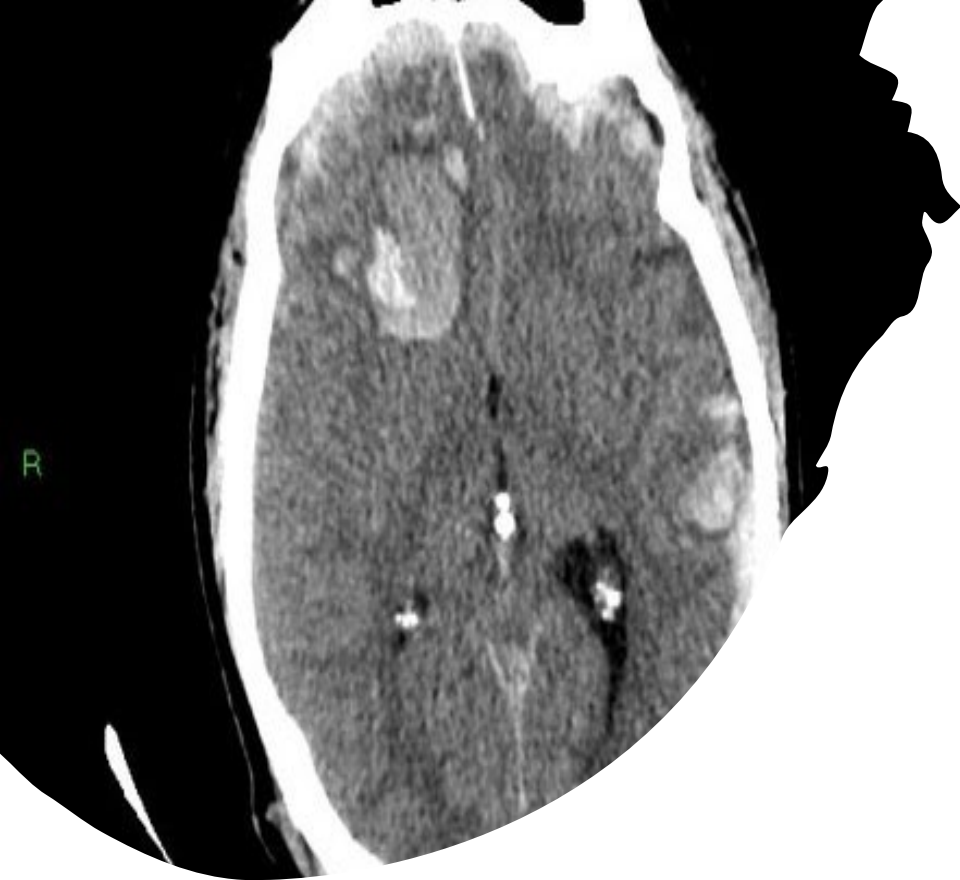
The report: can
a “civilian”
understand it?





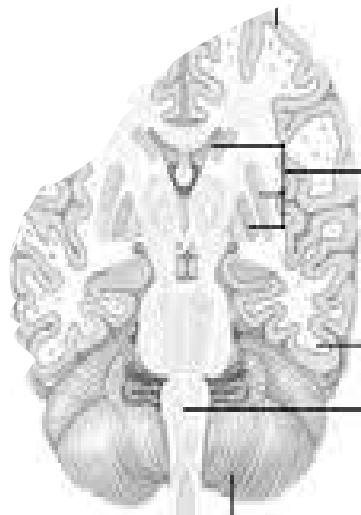
**Which face do you
want?**

CHARMED OR BORED – IT IS UP TO YOU...



A good example

“The human brain is a bit like an egg in a bag of water”



Basal ganglia

These islands of grey matter help to coordinate movement.

White matter

White matter consists largely of nerve fibres; its main role is to transmit nerve impulses.

Brain stem

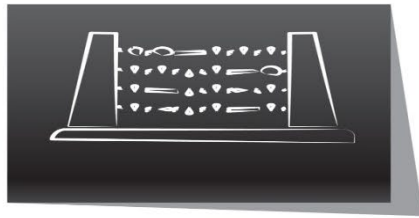
The main motor pathways cross over in the brain stem to the opposite sides of the body.

When you feel guilty about not studying but you still don't study



Preparation

You know it makes sense!

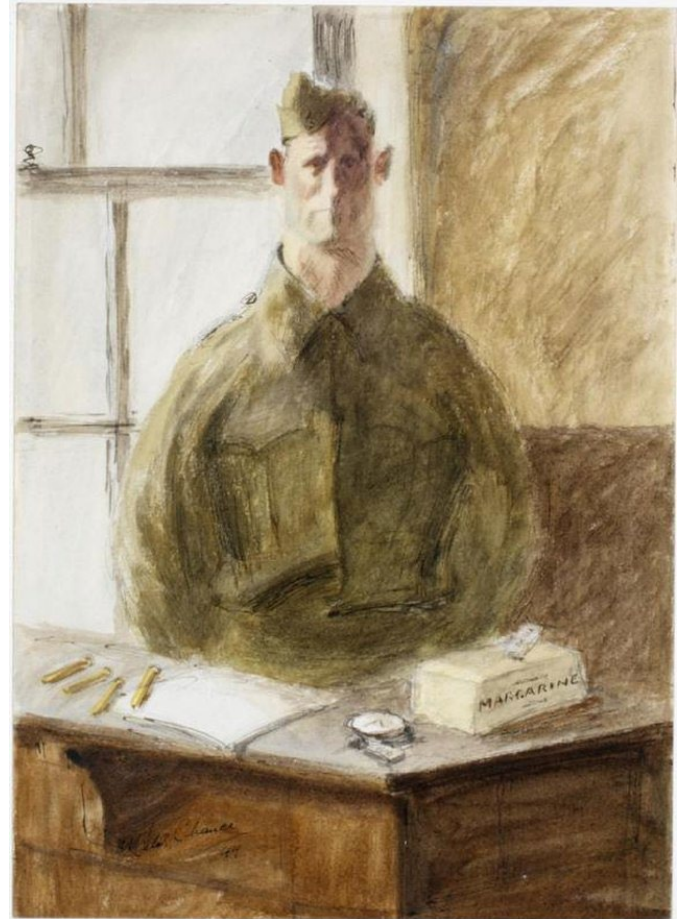


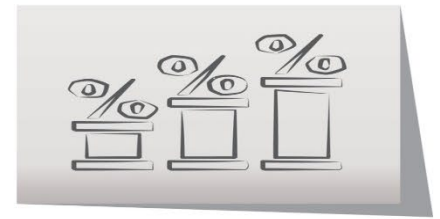
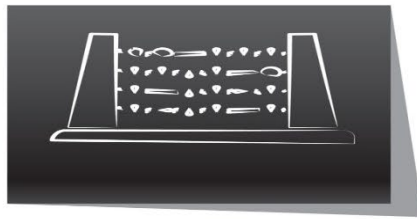
**DO YOU
FEEL
LUCKY....
PUNK?**



**WELL....
DO YA?**

Expert or Expert Witness?





Remember what you are there for:

- To answer questions
- To explain
- To listen and think
- To elucidate the ambit of disagreement – and the reasons for it
- Answer for, but not to the judge
- Giving ground is not always a weakness!



**The lessons of
My Cousin Vinny**



Neutrality

G: Miss Vito, you're supposed to be some kind of expert in automobiles, is that correct? Is that correct?

[No answer]

J: Will you please answer the Counselor's question?

M: No, I hate him.

G: May I have permission to treat Miss Vito as a hostile witness?

M: You think I'm hostile now, wait till you see me tonight.

J: Do you two know each other?

G: Yeah, she's my fiancé.

J: Well, that would certainly explain the hostility.



Relevant qualifications

P: In what way are you qualified?


M: Well, my father was a mechanic, his father was a mechanic, my mother's father was a mechanic, my three brothers are mechanics, four uncles on my father's side are mechanics—

P: Your family is obviously qualified, but have you ever worked as a mechanic?

M: Yeah, in my father's garage, yeah.

P: As a mechanic? What did you do in your father's garage?

M: Tune-ups, oil changes, brake relining, engine rebuilds, rebuild some trannies, rear end—



Dealing with the trick question

M: All right, all right. Now, Miss Vito, being an expert on general automotive knowledge, can you tell me what would the correct ignition timing be on a 1955 Bel-Air Chevrolet with a 327 cubic inch engine and a four-barrel carburetor?

M: It's a bullshit question....

J: Can you answer the question?

M: No, it is a trick question.

J: Why is it a trick question?

M: Cause Chevy didn't make a 327 in '55. The 327 didn't come out till '62, and it wasn't offered in a Bel-Air with a four-barrel carb 'til '64. However, in 1964 the correct ignition timing would be four degrees before top dead center.

P: Well, uh, she's acceptable your honor.



Helping the judge

M: Would you like me to explain?

G: I would love to hear this.

J: So would I.

M: The car that made these two equal length tire marks had positraction, can't make those marks without positraction, which is not available on the 1964 Buick Skylark ...

...there's more, you see, when the left tire mark goes up on the curb, and the right tire mark stays flat and even, well, the '64 Skylark had a solid rear axle, so when the left tire would go up on the curb, the right tire would tilt out and ride along its edge, but that didn't happen here, the tire marks stayed flat and even. This car had an independent rear suspension. Now in the 60's there were only two other cars made in America that had positraction and independent rear suspension and enough power to make these marks.